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New Choice Food, Inc. d/b/a Bavarian Specialty Foods and Bakery, Confectionary, Tobacco Workers' and Grain Millers' International Union, Local 31, AFL-CIO, CLC. Case 31-CA-27554

August 31, 2006

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMLER, AND KIRSANOW

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on October 18 and December 1, 2005, and January 3, 2006, respectively, the General Counsel issued the complaint on February 10, 2006, against New Choice Food, Inc. d/b/a Bavarian Specialty Foods, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On June 23, 2006, the General Counsel filed a Motion for Default Judgment with the Board. On June 28, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by February 24, 2006, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated May 4, 2006, notified the Respondent that unless an answer was received by May 10, 2006, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Torrance, California, has been engaged in the operation of a bakery. During the 12-month period ending December 12, 2005, the Respondent, in conducting its business operations described above, purchased and received at its Torrance, California facility goods valued in excess of \$50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Bakery, Confectionary, Tobacco Workers' and Grain Millers' International Union, Local 31, AFL-CIO, CLC (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

Jeff Kuo (Kuo)	Owner
Dan Curtis (Curtis)	Manager

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All production employees including baking, packing, warehouse, sanitation employees, and lead persons working at the Employer's facility at 22417 South Vermont Avenue, Torrance, California.

Excluded: All other employees, long haul and local truck drivers, maintenance employees, research and development employees, thermal molder operator, office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

Since about April 2004 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which was effective from April 2004 to January 31, 2005.

At all times since about April 2004, based on Section 9(a) of the Act, the Union has been the exclusive-

bargaining representative of the Respondent's employees in the unit.

About November 9, 2005, the Union requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about November 9, 2005, the Respondent, through its agent Curtis, has failed and refused to bargain with the Union for a successor collective-bargaining agreement.

Since at least April 19, 2005, the Respondent has failed and refused to recognize the Union as the exclusive collective-bargaining representative of its employees working on the so-called "Cracker Line."

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees since about November 9, 2005, and by refusing to recognize the Union as the exclusive collective-bargaining representative of its employees working on the so-called "Cracker Line" since at least April 19, 2005, we shall order it to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of all the unit employees, including employees working on the so-called "Cracker Line," with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, New Choice Food, Inc. d/b/a Bavarian Specialty Foods, Torrance, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively and in good faith with Bakery, Confectionary, Tobacco Workers and Grain Millers' International Union, Local 31, AFL-CIO, CLC, as the exclusive collec-

tive-bargaining representative of the employees in the following unit:

Included: All production employees including baking, packing, warehouse, sanitation employees, and lead persons working at the Employer's facility at 22417 South Vermont Avenue, Torrance, California.

Excluded: All other employees, long haul and local truck drivers, maintenance employees, research and development employees, thermal molder operator, office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit, including employees working on the so-called "Cracker Line," concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Torrance, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 19, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 31, 2006

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain collectively and in good faith with Bakery, Confectionary, Tobacco Workers' and Grain Millers' International Union, Local 31, AFL-CIO, CLC, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

Included: All production employees including baking, packing, warehouse, sanitation employees, and lead persons working at our facility at 22417 South Vermont Avenue, Torrance, California.

Excluded: All other employees, long haul and local truck drivers, maintenance employees, research and development employees, thermal molder operator, office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the unit, including employees working on the so-called "Cracker Line," concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

NEW CHOICE FOOD, INC. d/b/a
BAVARIAN SPECIALTY FOODS